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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,561	05/28/2002	Rainer Mangold		3281

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EXAMINER

PIERCE, JEREMY R

ART UNIT PAPER NUMBER

1771

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/089,561

Applicant(s)

MANGOLD ET AL.

Examiner

Jeremy R. Pierce

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 September 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-19

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Elizabeth M. Cole
ELIZABETH M. COLE
PRIMARY EXAMINER

Continuation of 3. Applicant's reply has overcome the following rejection(s): The 102 rejection to claims 12 and 13 as anticipated by Newkirk is withdrawn because Newkirk does not anticipate claim 11, from which claims 12 and 13 depend.

Continuation of 5. does NOT place the application in condition for allowance because: Applicant argues that Newkirk fails to teach the specific nature of the bicomponent material. However, Newkirk teaches using bicomponent fibers (column 3, lines 20-34). Newkirk also teaches the fibers have a denier of 3 or greater. This approximately equals 3.3 dtex or greater. Applicant's claimed range is 4 dtex to 10 dtex. If any weight is read into Newkirk's recitation of greater than 3.3 dtex, it must be read to encompass at least 4 dtex, which would anticipate Applicant's claim. Claim 14 depends from claim 1, and not claim 11, so the 102 rejection to claim 14 is maintained. Applicant argues that Barge teaches the use of bicomponent fibers of similar fineness in both the upper and lower ranges. However, Barge does not require the use of bicomponent fibers of similar fineness in the upper and lower ranges, and the recited ranges of Barge for the upper and lower ranges anticipates Applicant's claim. Applicant argues that Barge cannot be employed to teach the use of at least 40 percent bicomponent fibers in the lower layer. However, Barge explicitly teaches the bulky layer may consist essentially of bicomponent fibers (column 6, lines 39-46). If the bulky layer consists essentially of bicomponent fibers, then it comprises at least 40 percent bicomponent fibers. Barge also teaches these fibers have a dtex between 5 and 12, which anticipates Applicant's claimed range of 4 to 10 dtex.